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July 12, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith for filing on behalf of Red River Broadcast Corp., pursuant to Section 1.401 of the Commission's Rules, are an original and four copies of a "Petition for Rulemaking" to allot a new UHF television channel to Sioux Falls, South Dakota.

Red River is one of two competing applicants for the only present vacant allotment for that community. The action proposed in the Petition will eliminate the need for a comparative hearing and expedite provision of new over-the-air television service to Sioux Falls, thereby serving the public interest. The proposed action is consistent with the Commission's allotment policies. For these reasons, Red River would appreciate expedited action on the Petition.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

cc: Douglas W. Webbink
John A. Karousos

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ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re

Amendment of Section 73.606(b),)
Table of Allotments,)
Television Broadcast Stations)
(Sioux Falls, South Dakota))

RM- _____

DOCKET FILE COPY ORIGINAL

PETITION FOR RULEMAKING

Red River Broadcast Corp., by its attorneys and pursuant to Section 1.401 of the Commission's Rules, hereby petitions the Commission to: (1) amend the Table of Allotments for Television Broadcast Stations to add Channel 46 at Sioux Falls, South Dakota; and (2) authorize Red River to amend its pending application for Channel 36 at Sioux Falls to specify operation on Channel 46 without subjecting this application to a new cut-off.

Sioux Falls (1990 population 100,814) is by far the largest city in South Dakota, with nearly double the population of the next ranking community (Rapid City). It is located in the most populous county in the state, Minnehaha County, and is a business and commercial center for the tri-state area of eastern South Dakota, northwestern Iowa and southwestern Minnesota. Sioux Falls currently has four commercial television allotments, Channels 11, 13, 17 and 36. Channels 11, 13 and 17 are occupied by licensed stations. Channel 36 is vacant.

On December 27, 1994, Red River filed an application for a construction permit for Channel 36, proposing to operate it in conjunction with Channel 5,

licensed to Mitchell, South Dakota. (BPCT-941227KI.) On March 17, 1995, one additional application for Channel 36 was filed (BPCT-950317KM). There are thus two competing applications for Channel 36. (A copy of this Petition is being served on the competing applicant.) The parties now face the burden and expense of a comparative hearing, the Commission faces the need to devote its resources to adjudicate the applications, and the public in South Dakota faces delay in having access to new television service. The situation is made even more difficult because at this time there is no basis upon which to designate these applications for a comparative hearing or to otherwise resolve the mutually exclusive applications. See Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

Red River proposes that the Commission allot Channel 46 to Sioux Falls so that it can amend its application to specify proposed operation on that channel. The attached engineering study prepared by the firm of Cohen, Dippell & Everist demonstrates that Channel 46 can be allotted to this community in compliance with the Commission's distance separation rules and its policies for protecting future advanced television (ATV) allocations. There are in fact numerous additional UHF allotments which can be made to Sioux Falls which would meet the distance separation rules, including Channel 64. Sioux Falls is approximately 300 km away from the closest top-30 market, Minneapolis, and thus is not subject to the ATV freeze. Order in the Matter of Advanced Television and Their Impact Upon the Existing Television Service, 52 Fed. Reg. 28346 (1986).

Since 1982 the Commission has had a policy to add a second channel to a community where the only vacant channel is the subject of a comparative hearing, if the second channel can be added consistent with other allotment policies.

Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). The Commission noted, "If a second assignment can properly be made, there is every reason to decide this promptly and thereby avoid the high cost and great delay in an evidentiary hearing," and found that the new policy "can bring needed simplification to an unnecessarily cumbersome process and make far better use of the Commission's limited resources." Id. at 103.

Thus in identical situations to that involving Sioux Falls, where two applicants have filed competing applications for the only vacant channel and another channel can be allotted to eliminate the need for hearing, the Commission has done so. Copeland, Kansas, 5 FCC Rcd. 7682 (1990) (allotment of additional channel "would accommodate both applicants' desires for a channel in Copeland and avoid a comparative hearing."). It has applied this policy in TV as well as radio allotment cases. Roseburg, Oregon, 6 FCC Rcd. 4369 (1991); Albion, Nebraska, DA 95-474 (Mar. 21, 1995), aff'd, FCC 95-265 (June 27, 1995). These cases provide ample support for allotting Channel 46 to Sioux Falls. Such an allotment would allow Red River to modify its application to propose operation on Channel 46, thereby eliminating mutual exclusivity.

In these proceedings, the Commission has also allowed the modifying applicant to apply for the new channel without being subject to cut-off procedures,

as long as (a) no expressions of interest in the new channel are filed in the rulemaking, or (b) if such expressions are filed, there is at least one additional allotment which can be made to accommodate those parties. Copeland, Kansas, 5 FCC Rcd. 7682 (cut-off protection granted amending applicant where an additional channel was available and no other expressions of interest were in any event filed); Roseburg, Oregon, 6 FCC Rcd. 4369 (applicant permitted to retain cut-off protection "if there were no other expressions of interest in the allotment or if there was an additional television channel available for use by such parties"). Just three months ago, where an applicant for a UHF channel in Albion, Nebraska had drawn a competing application, the Commission allotted an additional channel to Albion, and permitted the first applicant to modify its application to specify operation on that new channel, "without loss of cut-off protection." The Commission noted that "the public interest would be served" by the procedure because it would "resolve the conflict between two mutually exclusive applications and permit the prompt institution of additional television service." Albion, Nebraska, DA 95-474 (Mar. 21, 1995), aff'd, FCC 95-265 (June 27, 1995). This is the case with Sioux Falls. Even if expressions of interest are filed in response to the Notice to allot Channel 46, Channel 64 or other channels could then be allotted to Sioux Falls.

Red River thus proposes that the Commission state in the Notice of Proposed Rulemaking that, if Channel 46 is allotted to Sioux Falls, it will permit Red River to modify its application to specify Channel 46, and will not subject that

application to the cut-off process. This will enable the applicants to pursue their applications promptly, expediting authorization of new television service to Sioux Falls, and thus providing the public with access to additional stations.

Invocation of the Commission's well-established allotment policies set forth above is warranted here and will clearly serve the public interest. Red River thus asks that a Notice of Rulemaking be promptly issued to add Channel 46 to the Table of Allotments for Television Broadcast Stations, and that Red River be permitted to modify its application, upon issuance of the Report and Order in the proceeding, to specify operation on Channel 46, without loss of cut-off protection.

Respectfully submitted,

RED RIVER BROADCAST CORP.

By: John T. Scott, III
John T. Scott, III
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 624-2582

Its Attorneys

Dated: July 12, 1995

**ENGINEERING REPORT
TO AMEND SECTION 73.606 OF THE FCC RULES
FOR A NEW UHF-TV STATION AT
SIOUX FALLS, SOUTH DAKOTA
RED RIVER BROADCAST CORPORATION**

MAY 1995

**COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)


Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.


Donald G. Everist
District of Columbia
Professional Engineer
Registration No. 5714

Subscribed and sworn to before me this 25th day of May, 1995.


Notary Public

My Commission Expires: 2/28/98

This engineering report has been prepared on behalf of Red River Broadcast Corporation ("Red River") licensee of VHF-TV station KDLT(TV), Channel 5, Mitchell, South Dakota, and applicant (BPCT-941227KI) for Channel 36, Sioux Falls, South Dakota. Red River proposes to amend the TV Table of Allotments, Section 73.606 of the FCC Rules as follows.

Sioux Falls, South Dakota

Add Channel No. 46

The reference coordinates for the proposed new allotment are:

NAD-27

North Latitude: 43° 31' 07"

West Longitude: 96° 32' 05"

The above coordinates are the same as those for KELO-TV, Channel 11 and KSFY-TV, Channel 13 both of which are licensed to Sioux Falls, South Dakota.

The proposed Channel 46 operation will provide City Grade (80 dBu) service to Sioux Falls, South Dakota.

Allocation Situation

Table I shows the allocation situation for the proposed Channel 46 allotment. The proposed allotment meets the required distance separations to all United States allotments.

The Channel 46 allotment meets the ATV freeze for TV applications in that it is located 307.9 km from the Minneapolis, Minnesota, reference point (NL 44°58'57", WL 93° 15' 43").

COHEN, DIPPELL AND EVERIST, P. C.

TABLE I
UHF-TV ALLOCATION SITUATION
FOR THE PROPOSED ALLOTMENT OF
CHANNEL 46 TO SIOUX FALLS, SOUTH DAKOTA
MAY 1995

<u>Channel</u>	<u>Adjacent Channel</u>	<u>Call</u>	<u>City/State</u>	<u>Geographic Coordinates</u>	<u>Actual Separation km</u>	<u>Required Separation km</u>
46	0	Proposed	Sioux Falls, SD	N 43°31'07" W 96°32'05"	--	--
31	-15	None within 200 km		--	--	119.9
32	-14	Allotment	St. James, MN	N 43°59'00" W 94°37'48"	161.9	95.7
38	-8	Allotment	Spirit Lake, IA	N 43°25'30" W 95°06'00"	116.6	31.4
39	-7	Allotment	Sioux City, IA	N 42°29'30" W 96°23'30"	114.7	95.7
41	-5	None within 125 km		--	--	31.4
42	-4	None within 125 km		--	--	31.4
43	-3	None within 125 km		--	--	31.4
44	-2	Allotment	Sioux City, IA	N 42°29'30" W 96°23'30"	114.7	31.4
45	-1	None within 175 km		--	--	87.7
46	0	None within 350 km		--	--	280.8
47	+1	None within 175 km		--	--	87.7
48	+2	None within 125 km		--	--	31.4
49	+3	None within 125 km		--	--	31.4
50	+4	None within 125 km		--	--	31.4
51	+5	None within 125 km		--	--	31.4
53	+7	None within 175 km		--	--	95.7
54	+8	None within 125 km		--	--	31.4
60	+14	None within 175 km		--	--	95.7
61	+15	None within 125 km		--	--	119.9